

## **REMARKS**

In the Final Office Action mailed December 5, 2008, claims 1, 4, 11-38, 59-62, 81-82, 87 and 89-93 were pending and stand finally rejected. Further consideration of the present application including claims 1, 4, 11-38, 59-62, 81-82, 87 and 89-93 is respectfully requested.

Claims 36-38 stand rejected under 35 USC §102(b) as anticipated by U.S. Patent No. 5,423,826 to Coates et al. Independent claim 36 has been amended to include the feature of the plate including a pair of bone engaging fastener holes positioned on opposite sides of the longitudinal axis and an aperture positioned between said pair of bone engaging holes along the longitudinal axis for receiving a washer having a tapered portion at least a portion of which is configured to engage at least a portion of a pair of bone engaging fasteners when positioned in the pair of bone engaging fastener holes. Coates et al. discloses no such features and as such, Applicants respectfully request the Examiner to remove the rejection of independent claim 36.

Claims 37 and 38 depend from claim 36 and are also allowable at least for the reasons claim 36 is allowable. Therefore, withdrawal of the rejection of claims 37 and 38 depending from claim 36 is also requested.

Claims 1, 4, 11-14, 18, 20-27, 81-82, 87, 92 and 93 stand rejected under 35 USC §103(a) as being unpatentable in view of U.S. Patent App. Pub. No. 2003/0105462 to Haider in view of U.S. Patent 6,228,085 to Theken et al. Independent claim 1 has been amended to include the features of each of the connection portions including a pair of openings each for receiving a bone anchor therethrough to attach the connection portion to the respective adjacent vertebrae. Each of the connection portions includes an aperture positioned between the pair of openings. The aperture is sized and configured to receive a washer having a tapered portion configured to engage a surface of each the bone anchors positioned in the pair of openings. A retaining device engageable to the plate locks the washer to the plate thereby fixedly securing the bone anchors in the pair of openings and preventing the pair of bone anchors from backing out of the plate.

Haider and Theken et al. do not disclose an aperture positioned between a pair of openings for receiving a bone anchor. Further, Haider and Theken et al. do not disclose an aperture that is positioned between a pair of openings that is sized and configured to receive a washer having a tapered portion configured to engage a surface of each of the bone anchors that

are positioned in the openings. In addition, Haider and Theken et al. do not disclose a retaining device engageable to the plate that locks the washer to the plate thereby fixedly securing the bone anchors in the pair of openings and preventing the pair of bone anchors from backing out of the plate. As such, Applicants respectfully request the Examiner to withdraw the rejection of independent claim 1.

Claims 4 and 11-17 depend from claim 1 and are also allowable at least for the reasons claim 1 is allowable. Therefore, withdrawal of the rejection of claims 4 and 11-17 depending from claim 1 is also requested.

Independent claim 20 has been amended to include the feature of the first and second connection portions including an aperture positioned between the at least two holes that is sized and configured to receive a washer having a tapered portion configured to engage at least a portion of the bone engaging fasteners. The washer is fixedly secured to the elongate plate with a retaining device received in the aperture thereby preventing the bone engaging fasteners from backing out of the plate. As with independent claim 1, Haider and Theken et al. do not disclose an aperture positioned between the at least two holes that is sized and configured to receive a washer having a tapered portion that is configured to engage at least a portion of the bone engaging fasteners. Further, Haider and Theken et al. do not disclose a retaining device that is received in the aperture and fixedly secured to the washer to prevent the bone engaging fasteners from backing out of the plate. As such, Applicants respectfully request the withdrawal of the rejection of independent claim 20 for at least this reason.

Claims 21-27 and 92-93 depend from claim 20 and are also allowable at least for the reasons claim 20 is allowable. Therefore, withdrawal of the rejection of claims 21-27 and 92-93 depending from claim 20 is also requested.

Independent claim 81 has been amended to include the feature of the first and second connection portions including an aperture between the pair of openings sized and configured to receive a washer having a tapered portion at least a portion of which is configured to engage a portion of each of the bone anchors positioned in the pair of openings. Each of the connection portions including a retaining device engageable to the aperture to fixedly secure the washer in the aperture and prevent the bone anchors in the pair of openings from backing out of said plate. As

previously set forth, Haider and Theken et al. do not disclose these claimed features. As such, Applicants respectfully request the withdrawal of the rejection of independent claim 81.

Claims 82 and 87 depend from claim 81 and are also allowable at least for the reasons claim 81 is allowable. Therefore, withdrawal of the rejection of claims 82 and 87 depending from claim 81 is also requested.

Claims 59-62 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Haider in view of Theken et al. and further in view of U.S. Patent No. 6,514,274 to Boucher et al. Independent claim 59 has been amended to include the features of the first and second connection portions including at least two holes offset from the longitudinal axis for receiving a pair of bone engaging members. Further, independent claim 59 has been amended to include the features of the first and second connection portions including an aperture between the at least two holes for receiving a washer having a tapered portion configured to engage each of the pair of bone engaging members to prevent the bone engaging members from backing out of the plate. Haider, Theken et al., and Boucher et al. do not disclose these claimed features. As such, Applicants respectfully request reconsideration of the rejection of independent claim 59 for at least this reason.

Claims 60-62 depend from claim 59 and are also allowable at least for the reasons claim 59 is allowable. Therefore, withdrawal of the rejection of claims 60-62 depending from claim 59 is also requested.

Claims 1, 11-15, 18-27, 81-82, 87, 92 and 93 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,413,259 to Lyons et al. in view of Theken et al. As set forth above, independent claim 1 has been amended to include the features of each of the connection portions including a pair of openings each for receiving a bone anchor therethrough to attach the connection portion to the respective adjacent vertebrae. Each of the connection portions includes an aperture positioned between the pair of openings. The aperture is sized and configured to receive a washer having a tapered portion configured to engage a surface of each of the bone anchors positioned in the pair of openings. A retaining device engageable to the plate locks the washer to the plate thereby fixedly securing the bone anchors in the pair of openings and preventing the pair of bone anchors from backing out of the plate.

Lyons et al. discloses a plate that includes an aperture that receives a screw retaining member. The screw retaining member has hemispherical surfaces at the edges that contact the heads of the bone screws. To the contrary, Applicants claimed invention includes an aperture that receives a washer that has a tapered portion configured to engage a surface of each of the bone anchors. A retaining device is then positioned in the aperture to secure the washer in the aperture thereby fixedly securing the bone anchors in the pair of openings and preventing the pair of bone anchors from backing out of the plate. The screw retaining device disclosed in Lyons et al. is a unitary structure that must be screwed onto the plate. The screw retaining device includes ends extending from a screw that have hemispherical surfaces that contact the heads of the bone screws. As such, the screw retaining device disclosed in Lyons et al. cannot properly be construed as a washer and retaining device recited in independent claim 1. To that end, Applicants respectfully request the withdrawal of the rejection of independent claim 1 as none of the prior art relied upon recites Applicants claimed features.

Claims 11-15 depend from claim 1 and are also allowable at least for the reasons claim 1 is allowable. Therefore, withdrawal of the rejection of claims 11-15 depending from claim 1 is also requested.

Independent claim 20 has been amended to include the feature of the first and second connection portions including an aperture positioned between the at least two holes sized and configured to receive a washer having a tapered portion configured to engage at least a portion of the bone engaging fasteners, wherein the washer is fixedly secured to the elongate plate with a retaining device received in the aperture thereby preventing the bone engaging fasteners from backing out of the plate. As set forth above, neither Lyons et al. or Theken et al. disclose these claimed features. The screw retaining device disclosed in Lyons et al. cannot properly be construed as a washer having a tapered portion configured to engage at least a portion of the bone engaging fasteners.

Claims 21-27 and 92-93 depend from claim 20 and are also allowable at least for the reasons claim 20 is allowable. Therefore, withdrawal of the rejection of claims 21-27 and 92-93 depending from claim 20 is also requested.

Independent claim 81 has been amended to include the feature of the first and second connection portions including an aperture between the pair of openings sized and configured to

receive a washer having a tapered portion at least a portion of which is configured to engage a portion of each of the bone anchors positioned in the pair of openings. Each of the connection portions including a retaining device engageable to the aperture to fixedly secure the washer in the aperture and prevent the bone anchors in the pair of openings from backing out of said plate. As set forth above in detail, Lyons et al. and Theken et al. do not disclose these claimed features. As such, Applicants respectfully request the withdrawal of the rejection of independent claim 81.

Claims 82 and 87 depend from claim 81 and are also allowable at least for the reasons claim 81 is allowable. Therefore, withdrawal of the rejection of claims 82 and 87 depending from claim 81 is also requested.

Claim 4 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Lyons et al. in view of Theken et al. and in further view of Haider et al. Applicants have amended independent claim 1 to overcome the rejection of independent claim 1. Since claim 4 is dependent from independent claim 1, Applicants believe that claim 4 is allowable for at least the reasons that independent claim 1 is allowable and respectfully request reconsideration and allowance of the same.

Claims 16-17, 28-35 and 89-91 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Lyons et al. in view of Theken et al. in further view of U.S. Patent No. 6,193,721 to Michelson. Claims 16-17 depend from independent claim 1 which is believed to be allowable over the prior art of record. As such, Applicants believe that dependent claims 16-17 are allowable as well for at least this reason. Reconsideration and allowance of dependent claims 16-17 is respectfully requested.

Independent claim 28 has been amended to include the features of the first and second connection portions including at least two holes spaced apart from the longitudinal axis for receiving bone engaging fasteners. The first and second connection portions further including an aperture along the longitudinal axis sized and configured to receive a washer having a tapered portion at least a portion of which being oriented to engage at least a portion of the bone engaging fasteners. The washer being secured in the aperture with a retaining device such that the washer prevents the bone engaging fasteners from backing out of the plate. Neither Lyons et al., Theken et al., or Michelson

disclose these claimed features. As such, Applicants respectfully request reconsideration and allowance of independent claim 28 for at least these reasons.

Claims 29-35 depend from claim 28 and are also allowable at least for the reasons claim 28 is allowable. Therefore, withdrawal of the rejection of claims 29-35 depending from claim 28 is also requested.

Independent claim 89 has also been amended to include features not taught by the prior art of record. In particular, independent claim 89 has been amended to include the features of the first and second connection portions having a pair of bone engaging fastener holes offset to one side of the longitudinal axis sized and configured to receive a pair of bone engaging fasteners. The first and second connection portions have an aperture between the pair of bone engaging fastener holes configured to receive a washer having a tapered portion configured to engage at least a portion of the pair of bone engaging fasteners. Neither Lyons et al., Theken et al., or Michelson disclose these claimed features. As such, Applicants respectfully request reconsideration and allowance of independent claim 89 for at least these reasons.

Claims 90-92 depend from claim 89 and are also allowable at least for the reasons claim 89 is allowable. Therefore, withdrawal of the rejection of claims 90-92 depending from claim 89 is also requested.

Claims 59-62 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Lyons et al. in view of Theken et al. and in further view of Boucher et al. Independent claim 59 has been amended to include the features of the first and second connection portions including at least two holes offset from the longitudinal axis for receiving a pair of bone engaging members. Further, independent claim 59 has been amended to include the features of the first and second connection portions including an aperture between the at least two holes for receiving a washer having a tapered portion configured to engage each of the pair of bone engaging members to prevent the bone engaging members from backing out of the plate. Lyons et al., Theken et al., and Boucher et al. do not disclose these claimed features. As such, Applicants respectfully request reconsideration of the rejection of independent claim 59 for at least this reason.

Claims 60-62 depend from claim 59 and are also allowable at least for the reasons claim 59 is allowable. Therefore, withdrawal of the rejection of claims 60-62 depending from claim 59 is also requested.

In view of the foregoing, the present application including claims 1, 4, 11-38, 59-62, 81-82, 87 and 89-93 is in condition for allowance. The examiner is encouraged to contact the undersigned by telephone to resolve any outstanding matters concerning the subject application.

Respectfully submitted,

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